

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACOB JOSEPH SUMMERVILLE,

Defendant-Appellant.

UNPUBLISHED

July 30, 2009

No. 285129

Muskegon Circuit Court

LC No. 04-049963-FH

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Defendant, acting *in propria persona*, appeals by delayed leave granted the trial court's order denying defendant's motion for relief from judgment. We affirm.

According to the police report, defendant was driving an automobile while his license was suspended and, while doing so, turned in front of an automobile driven by Jene Weathers. Weathers' car struck defendant's car. Amanda Straight, Weathers' fiancée, was riding in the front passenger seat of Weathers' car. While Weathers and his other passenger did not suffer significant injury, Straight suffered a fatal throat injury.

Defendant pleaded no contest to driving while license suspended causing death, MCL 257.904(4), and was sentenced to four and one-half to 15 years in prison. He has now served nearly six years of his sentence. After his conviction, defendant filed a delayed application for leave to appeal. This Court denied defendant's application for lack of merit in the grounds presented, *People v Summerville*, unpublished order of the Court of Appeals, entered June 24, 2005 (Docket No. 261623) and our Supreme Court denied leave to appeal, *People v Summerville*, 474 Mich 946; 706 NW2d 201 (2005). Defendant subsequently moved for relief from judgment, which the trial court denied.

We review a trial court's ruling on a motion for relief from judgment for an abuse of discretion. *People v Ulman*, 244 Mich App 500, 508; 625 NW2d 429 (2001). An abuse of discretion occurs where the trial court's decision falls outside a range of principled outcomes. See *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). "A claim of ineffective assistance of counsel involves a mixed question of fact and constitutional law. The trial court's factual findings are reviewed for clear error, and its constitutional determinations are reviewed de novo." *People v McGhee*, 268 Mich App 600, 625; 709 NW2d 595 (2005) (citations omitted). Further:

Effective assistance of counsel is presumed, and [a] defendant bears a heavy burden of proving otherwise. In order to overcome this presumption, defendant must first show that counsel's performance was deficient as measured against an objective standard of reasonableness under the circumstances and according to prevailing professional norms. Second, defendant must show that the deficiency was so prejudicial that he was deprived of a fair trial such that there is a reasonable probability that but for counsel's unprofessional errors the trial outcome would have been different. [*Id.* (internal citations omitted).]

Because a *Ginther*¹ hearing was not conducted, our review of defendant's claim of ineffective assistance of counsel is limited to mistakes apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997).

A defendant may seek post-appeal judgment relief under MCR 6.500 *et seq.*, but relief is unavailable to a defendant who "alleges grounds for relief . . . which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter" MCR 6.508(D)(3). A defendant may avoid application of this bar to relief if he can demonstrate good cause and actual prejudice. MCR 6.508(D)(3)(a) and (b); *People v McSwain*, 259 Mich App 654, 681; 676 NW2d 236 (2003). A showing of ineffective assistance of counsel may establish good cause. See *People v Reed*, 449 Mich 375, 378-379; 535 NW2d 496 (1995).² To demonstrate prejudice under MCR 6.508(D)(3)(b), a defendant who pleaded no contest must show that "the defect in the proceedings was such that it renders the plea an involuntary one to a degree that it would be manifestly unjust to allow the conviction to stand" or that "the irregularity was so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand regardless of its effect on the outcome of the case" MCR 6.508(D)(3)(b)(ii) and (iii).

Defendant argues that the trial court should have granted his motion for relief from judgment because his actions were not a proximate cause of Straight's death. Defendant points to what he claims is newly discovered evidence showing that Weathers' automobile, a 1991 Mitsubishi Eclipse, had a defectively designed lap seat belt. Specifically, this model vehicle had an automatic shoulder belt and a separate manual lap belt and, in 1995, a recall was ordered for a defect causing a failure of the manual lap belt to fully latch. As a result of this defect, the lap belt could unlock and release in an accident leaving only the shoulder belt to restrain the occupant, a situation that could cause serious throat injuries. According to the police report, Weathers reported that although Straight had put on her lap belt, he found that it was not latched immediately after the accident. He also noted that Straight had problems in the past with that lap belt not latching properly. Defendant also contends that his trial attorney provided ineffective

¹ *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

² A trial court may waive the good cause requirement "if it concludes that there is a significant possibility that the defendant is innocent of the crime." MCR 6.508(D)(3). However, it does not appear that the trial court did so in this case, because it made no specific finding regarding defendant's actual innocence.

assistance of counsel by failing to properly investigate the circumstances surrounding the accident.

Defendant concedes that his action in driving on a suspended license was a cause-in-fact of Straight's death. However, he argues that Straight's death was not proximately caused by his actions. He argues that by allowing Straight to ride in a seat with a seat belt that Weathers knew had not always latched properly, Weathers was guilty of gross negligence which was an intervening, superseding cause of Straight's death.

In *People v Schaefer*, 473 Mich 418; 703 NW2d 774 (2005), overruled in part on other grounds, *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006), our Supreme Court addressed the effect of an intervening cause on proximate causation in the context of the offense of OUIL causing death. The Court noted that criminal liability will not attach "when the result of defendant's conduct is viewed as too remote or unnatural" and that to make this determination "it is necessary to examine whether there was an intervening cause that superseded the defendant's conduct such that the causal link between the defendant's conduct and the victim's injury was broken." *Id.* at 436-437. The Court held that if the intervening cause were reasonably foreseeable then the defendant's conduct would be considered a proximate cause of the injury or death. However, "if the intervening act was not reasonably foreseeable – e.g. gross negligence or intentional misconduct – then generally the causal link is severed." *Id.* at 437-438 (emphasis in original). The Court went on to explain that:

In criminal law, "gross negligence" is not merely an elevated or enhanced form of ordinary negligence. . . . [I]n criminal jurisprudence, gross negligence "means wantonness and disregard of the consequences which may ensue, and indifference to the rights of others that is equivalent to a criminal intent." [*Id.* at 438.]

In this case, defendant argues that he could not have presented his claim of superseding cause in his direct appeal, because information concerning the nature of the seatbelt's defective design was not uncovered until after this Court and our Supreme Court had denied leave in his direct appeal.³ However, defendant cannot assert that he was unaware of the existence of a possible problem with Straight's seat belt because of statements made by Weathers to the investigating officer and the police report for the accident. As noted by the trial court, defendant was well aware of a possible probable cause defense and discussed it with his attorney before entering his plea. Hence, defendant cannot establish good cause for failing to raise this issue in his initial appeal. Nor can he establish actual prejudice under the circumstances, especially because he has failed to claim that his plea was involuntary.

Further, we find that even if the lap belt was designed negligently and/or Weathers or Straight knew about a problem with the latching of the lap belt, these actions would not break the chain of causation linking defendant to Straight's death. None of the actions by persons other

³ Apparently, the expert opinion information upon which defendant relies was generated during a lawsuit by Straight's personal representative against Mitsubishi, and was later furnished to defendant by Straight's mother.

than defendant rose to the level of intentional or grossly negligent conduct that could form a superseding cause of the accident. Because counsel's response to defendant concerning this possible defense comprised an objectively reasonable legal opinion, we also find that defendant's claim that his trial counsel was ineffective for failing to pursue this issue fails. Accordingly, we affirm the trial court's denial of defendant's motion for relief from judgment.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot